

ESTTA Tracking number: **ESTTA568315**

Filing date: **10/31/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lumene Oy		
Entity	Corporation	Citizenship	Finland
Address	Lasikuja 2 Espoo, 02780 FINLAND		

Attorney information	Attorneys-At-Law Borenus LLP Attorneys-At-Law Borenus LLP 65 Broadway, Ste 503 New York, NY 10006 UNITED STATES lasse.laaksonen@borenus.com Phone:2125352556
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Applicant Information

Application No	85920137	Publication date	10/01/2013
Opposition Filing Date	10/31/2013	Opposition Period Ends	10/31/2013
Applicant	Formula XO, Inc. 4350 North Fairfax Drive, Suite 610 Arlington, VA 22203 GERMANY		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Hair care products, namely, shampoos and conditioners; skin care products, namely, cleansers, moisturizers and non-medicated sun protection preparations

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2429020	Application Date	07/12/1994
Registration Date	02/20/2001	Foreign Priority Date	NONE
Word Mark	LUMENE		

Design Mark	LUMENE
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 0 First Use In Commerce: 0 cosmetics, namely, body care, face care and hand care products in the form of nourishing, conditioning and moisturizing liquids for face and body care, creams, masks, ampoules containing nourishing, conditioning and moisturizing liquids for face and body care; nourishing, conditioning and moisturizing gels and emulsions for face and body care; facial makeup, foundations, skin cleansing lotions, cleaning, soothing and refreshing tonics for face care, [non-medicated acne preparations,] lipstick, lip glosses, lip liner, nail polish, mascara, eyeliner, eye shadow, eye make-up remover, face powder, face creams, rouges, nail polish remover; nail care preparations, sun protection preparations; body soaps, [laundry detergents, hair and] body shampoos, [hair conditioning preparations, hair waving preparations, hair gels, hair dye; hair sprays; personal deodorants, personal anti-perspirants, essential oils for personal use] and [for use in the manufacture of scented products;] shaving preparations [; toothpaste]

Attachments	74548352#TMSN.gif(bytes) Lumene Oy_Statement of the claim_Luminse.pdf(31388 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Jarno J. Vanto/
Name	Jarno Vanto
Date	10/31/2013

The opposition is based on the earlier mark "LUMENE". The marks show considerable visual and aural similarities. The goods are identical.

Visually, the marks share the beginning four letters "LUM". Furthermore, the marks share the last letter "E". Overall, the marks coincide in five letters.

Aurally, the marks are highly similar as they share identical beginnings and last letters.

The marks have normal level of distinctiveness. As the marks are word marks, there are no dominant elements. Taking into account that the goods are everyday consumer goods, the degree of attention of the relevant public is normal.

It must be noted that consumers, in general, do not have both signs in front of them at the time encountering either of them, such as in advertising, or when purchasing certain goods. The consumers do not clearly recollect all the details of the signs. The sign at hand and the "imperfect recollection" of another sign are the basis on which consumers evaluate whether the respective signs are the same or similar ones or not. Taking into account the fact that the consumers do not recollect small details in the signs, there is a clear likelihood of confusion between the marks, especially considering that the goods in question are normal, everyday goods.

Furthermore, the goods are identical. The identity of the goods clearly counterbalances the slight differences between the marks.

Due to the high visual and aural similarity and the absence of any dominant or non-distinctive elements in the signs, a likelihood of confusion exists for identical goods. The contested sign must therefore be rejected.